

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION**

**April 5, 2003**

**TO:** Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

**FROM:** John Keel, Director, Legislative Budget Board

**IN RE: SB256** by Harris (Relating to contingent payment clauses in certain construction contracts.),  
**As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill adds Section 35.521 entitled "Agreement for Payment of Construction Subcontractor" to the Business & Commerce Code relating to contingent payment clauses in construction contracts. The bill sets forth definitions for contingent payment clause, contingent payor, contingent payee, and specifies the conditions when a contingent payor or its surety may enforce the contingent payment clause of a contract and the circumstances when an unpaid indebtedness accrues. The bill states that the assertion of a contingent payment clause is an affirmative defense to a civil action for payment under the contract as long as the party asserting the defense can prove that the clause is enforceable, the provisions when the clause may not be waived by contract or other means, and applies only to contingent payment clause under which payment is contingent on the receipt of payment under a contract or other agreement entered into on or after September 1, 2003. The Act takes effect September 1, 2003.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General

**LBB Staff:** JK, JRO, MS, BL